IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE GODA RAGHURAM**

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**WRIT PETITION NO : 18236 of 2005**

Between:

S.S.Organics Ltd., B-23, 2nd Floor, Madhuranagar, S.R.Nagar, Hyderabad-38, represented by its
Managing Director, Sri V.N.Sunanda Reddy.

..... PETITIONER

**AND**

Employees State Insurance Corporation, Regional Office, Andhra Pradesh, 5-9-23, Hill Fort Road,
Hyderabad-500 063, rep., by its Regional Director.

.....RESPONDENT

**ORDER:**

The petitioner assails the proceedings of the respondent, dated 09.08.2005, imposing damages in an amount of Rs.10,19,432/- for the petitioner's failure in remitting E.S.I contributions within the time stipulated, under the provisions of the A.P. Employees State Insurance 1948 (hereinafter referred to as ESI Act) for the period February, 1995 to January, 2003. The impugned order sensitized the petitioner that it is open to the petitioner to approach the Director General, ESI Corporation, New Delhi for waiver of the damages and in case no waiver is ordered, it would have to pay the damages as stipulated, failing which the amount would be recovered under Section 45 (C ) to 45(I) of the Act. Having stated this, the impugned order inadvertently records this sentence " no appeal/representation will be entertained against this order". Literally construing the last sentence reproduced above, the petitioner apprehends that even before the petitioner's representation to the Director General, ESI Corporation, New Delhi and/or during the pendency of such representation, seeking waiver of damages, the respondent would take

coercive steps as per the Revenue Recovery Act.

Sri R.N.Reddy, learned standing counsel for the respondent submits that the petitioner should an opportunity under Section 85(B) of the ESI Act. The relevant provision reads as under:

85(B). Power to recover damages:-

1. Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover (from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations):

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Corporation may reduce or waive the damages recoverable under this Section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as maybe specified in regulations.

2. Any damages recoverable under Sub-section (1) may be recovered as an arrear of land revenue or under Section 45C to Section 45-I

The petitioner has been registered as a sick industrial company before the Board for Industrial and Financial Reconstruction, in file bearing reference No. 91/97, M/s. S.S. Organics Limited. The claim for rehabilitation of the petitioner's company is being considered. A rehabilitation scheme is under process. Therefore, in accordance with the second proviso to Section 85(B) of the ESI Act, the petitioner is entitled to consideration of its claim for reduction or waiver of the damages recoverable from it for its failure to make the ESI contributions in time. Whether the competent authority would reduce or waive is a matter within the rational discretion of the authority under the provisions of the said Act. Till such a decision is taken on the petitioner's representation made for a waiver, the respondent is not entitled to initiate any coercive steps.

In the circumstances and in the light of the categorical and unequivocal submissions on behalf of the respondents, there appears no cause for the petitioner's

apprehension based on the last sentence of the respondent's order, dated 09.08.2005. Recording the above submissions on behalf of the respondent, the writ petition is disposed of at the stage of admission. The petitioner is at liberty to make a representation to the competent authority for waiver of the damages, under the second proviso to Section 85(B) of the Act within four weeks from the date of receipt of a copy of this order. No costs.

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18-08-2005

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